

36.11.111 AGREEMENT NOT TO EXPORT STATE LOGS (1) This rule carries out the purposes of section 491 of the Forest Resources Conservation and Shortage Relief Act of 1990, P.L. 101-382, § 487-499, 104 Stat. 714-726, 16 U.S.C.A. 620 (referred to hereinafter as the Act) which became effective on September 10, 1990, and the definitions stated in that Act are hereby incorporated by reference. The text of the Act may be found at pages H5920 through H5924 of the Congressional Record for July 30, 1990. [Copies of these pages of the Congressional Record can be reviewed at the Department of Natural Resources and Conservation office in Helena.] This rule replaces and supersedes any prohibitions imposed by subsection 491(d)(3)(B) of the Act.

(2) Any person purchasing timber from the state of Montana must have first entered into an agreement with the department (referred to hereinafter as a nonexport agreement) containing the following commitments on behalf of the purchaser:

(a) Unprocessed timber, as defined in the Act, originating from lands owned by the state of Montana shall not:

(i) be exported from the United States;

(ii) be sold, traded, exchanged, or otherwise given to any person unless that person agrees not to export such unprocessed timber from the United States and agrees to require such a prohibition in any subsequent resale or other transaction involving such unprocessed timber; or

(iii) be used in substitution for exported unprocessed timber originating from private lands in Montana.

(b) In the event purchaser violates any of the provisions of the nonexport agreement, the department, after notice and opportunity for a hearing, may:

(i) terminate any timber sale contracts or timber sale permits with that purchaser; and/or

(ii) bar purchaser from entering into any future contracts for the purchase of timber with the state of Montana for a period of up to five years.

(c) For purposes of such nonexport agreement, the following definitions apply:

(i) "Export" means either direct or indirect export to a foreign country and occurs on the date that a person enters into a contract or other binding transaction for the export of unprocessed timber or, if that date cannot be established, when

unprocessed timber is found in an export yard or pond, bundled or otherwise prepared for shipment, or aboard an ocean-going vessel. An export yard or pond is an area where sorting and/or bundling of logs for shipment outside the United States is accomplished. Timber is exported indirectly when export occurs as a result of a sale to another person or as a result of any subsequent transaction.

(ii) "Substitution" means the purchase of unprocessed timber originating from state forests as provided in 77-5-101, MCA, to be used as replacement for unprocessed timber from private lands in Montana that is exported by the purchaser. Substitution occurs when a person purchasing timber from the state of Montana has exported unprocessed timber from private lands in the state during the period of one year prior to the purchase date.

(d) The nonexport agreement may be terminated by the purchaser upon the termination of any and all contracts or permits for the purchase of unprocessed timber originating from lands owned by the state of Montana. The nonexport agreement may be terminated by the department upon thirty days notice.

(3) The provisions of such nonexport agreement shall not apply to any contract or permit for the purchase of unprocessed timber from state lands entered into before the effective date of such nonexport agreement.

(4) The prohibitions of such nonexport agreement shall not apply to specific quantities of grades and species of unprocessed timber originating from state lands which the United States secretary of commerce determines by rule to be surplus to the needs of timber manufacturing facilities in the United States as provided in the Act.

(5) The provisions of such nonexport agreement shall be suspended or modified as provided in any order of the president of the United States pursuant to subsections 491(e), (f), or (i) of the Act. (History: 77-5-201, MCA; IMP, 77-5-201, MCA; NEW, 1990 MAR p. 2116, Eff. 11/30/90; TRANS, 1995 MAR p. 1958, Eff. 7/1/95; AMD, 1995 MAR p. 2153, Eff. 9/15/95.)